Attorney General
Betty D. Montgomery

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December 10, 1997

Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: Comments in CC Docket Nos. 80-286 and 97-212

Dear Secretary:

On December 10, 1997, the **Public Utilities Commission of Ohio (PUCO) submitted Comments** in the above-referenced dockets. I have identified a typographical error in those comments and **am submitting Amended Comments** to reflect the proper language that was intended. I have included a new original and 12 copies of **the Amended Comments.** Please return the extra copy in the enclosed self-addressed, stamped envelope.

In particular, on line three (3) of page seven (7), it was improperly stated that the PUCO prefers that "the FCC without input from NARUC and the Joint Board, continue to establish these [separations] requirements." The PUCO intended to recommend that "the FCC with input from NARUC and the Joint Board, continue to establish these [separations] requirements." I apologize for any confusion this typographical error may have caused.

Thank you for your consideration in this matter.

Respectfully submitted,

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cc: Connie Chapman, Common Carrier Bureau
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Before the

FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Jurisdictional Separations Reform and Referral to the Federal-State Joint Board	)))))	CC Docket No. 80-286
Amendments to Uniform System of Accounts for Interconnection	))	CC Docket No. 97-212

AMENDED COMMENTS OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

INTRODUCTION

On October 7, 1997, the Federal Communications Commission (FCC) released two Notice of Proposed Rulemakings (NPRMs) in CC Docket No. 80-286 (In the Matter of Jurisdictional Separations Reform and Referral to the Federal-State Joint Board) and in CC Docket No. 97-212 (In the Matter of Amendments to the Uniform System of Accounts for Interconnection). Initial comments in response to both NPRMs are due at the FCC on or before December 10, 1997.

The Public Utilities Commission of Ohio (PUCO) hereby submits its comments pursuant to the FCC's NPRMs in CC Docket Nos. 80-286 and 97-212 regarding certain proposed reforms to its jurisdictional separations procedures and amendments to the Uniform System of Accounts (USOA). Unless other wise specifically identified, the PUCO's comments herein are responding solely to the FCC's 80-286 NPRM.

BACKGROUND

The FCC's 80-286 NPRM requests public comment on proposed reforms to its current jurisdictional separations procedures. Specifically, the FCC proposes a comprehensive review of its C.F.R. Part 36 jurisdictional separations rules. The FCC questions whether some form of separations must continue to exist given recent statutory, regulatory, and market condition changes. The FCC further requests comment on whether it is legally required to continue to maintain separations. In the event it must continue to prescribe such rules, the FCC requests comment on what changes should occur to separations to take into consideration the transformation from a regulated to a competitive marketplace.

The FCC's NPRM in CC Docket No. 97-212 requests comment on whether new accounts are necessary for the accounting treatment of transactions related to the incumbent LECs' interconnection and shared infrastructure services. Section 259 of the Telecommunications Act of 1996 (1996 Act) requires incumbent LECs to make available public switched network infrastructure to qualifying carriers that are providing universal service outside of the incumbent LECs' service territories.

DISCUSSION

Criteria for Evaluating the Separations Process

Legal Basis for Separations

There is an ongoing legal and practical basis for concluding that the FCC's separations process is a necessary and important regulatory function.

The FCC seeks comment on whether separations rules are still necessary during the transition from a regulated to a competitive marketplace, and in particular whether the doctrine adopted by the United States Supreme Court in *Smith v. Illinois*, 282 U.S. 133 (1930), is still applicable in the current regulatory environment. (NPRM at ¶ 32.)

The PUCO maintains that the separations rules are still necessary and relevant. Prior to passage of the Communications Act of 1934, (1934 Act) the Court in *Smith* recognized the jurisdictional dichotomy utilized in telecommunications regulation and concluded that jurisdictional separations was necessary under dual jurisdiction regulation. Well after passage of the 1934 Act, the Supreme Court has more recently recognized that this jurisdictional dichotomy remains important under the 1934 Act. *See Louisiana Pub. Serv. Comm'n. v. FCC*, 476 U.S. 355, 374-375 (1986) (recognizing the important distinction between interstate and intrastate telecommunications jurisdiction, as reflected in 47 U.S.C. Section 152(b)). Even under the 1996 Act, the federal courts have continued to recognize the continuing importance of the separate jurisdictional roles of the FCC and the state commissions. *Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997).

In the *Smith* case, the Supreme Court first defined the need to conduct separations in the context of telephone service. In that case, the telephone company provided local service, long distance service within the state of Illinois, and interstate long distance service. In reaching its decision, the Supreme Court recognized that the separation of costs between interstate and intrastate was not simply a process to distinguish different types of services performed by one telephone company, "...[i]t is a recognition of the competent governmental authority in each field of regulation." *Smith v. Illinois* 282 U.S. 133, 148.

The PUCO submits that the foundation of the decision in *Smith* is the dual regulatory roles of the FCC and state commissions, which remains in place to this day. The FCC noted in its request for comments that there have been legislative changes as well as changes in the market place since the court's decision in the *Smith* case. (NPRM at ¶¶ 33-37.) While deregulation and the provisions of the 1996 Act have made sweeping changes that affect consumers and telecommunication service, the jurisdiction of the FCC over interstate telecommunications and the authority of the states to regulate intrastate telecommunications have not been affected. Consequently, the PUCO contends that the separations process is a necessary and integral function.

The commonality between the facts in the *Smith* case and the issues raised in the NPRM is that the companies subject to the FCC's separations process offer both interstate and intrastate services (as was the case with the telephone company in the *Smith* case). Thus, although this is a period of transition from a regulated market place to competition, the identification of jurisdictional costs is still relevant. There are several practical reasons supporting the conclusion that separations is a necessary and appropriate function for the FCC to perform.

The jurisdictional separations process is an integral component of the accounting safeguards to ensure that incumbent local exchange carriers (ILECs) properly record and report revenues, expenses, and investment for their regulated, unregulated, interstate, and intrastate operations. Separations, along with the companion Part 32 and Part 64 cost allocation rules, are collectively surrogates for segment accounting as provided by Statement of Financial Accounting Standards (SFAS) No. 14, Financial Reporting for Segments of a Business Enterprise. Until such time as state and federal regulators relinquish rate-setting authority or fully-developed competition exists, there will be a need for cost-based financial information to ensure that costs are not recovered in both intrastate and interstate jurisdictions.

The purpose of segment accounting under SFAS 14 is to provide information to assist financial statement users in analyzing and understanding a business enterprise's financial statements by permitting better assessment of the enterprise's past performance and future projects for distinct business units. Likewise, jurisdictional separations provides information to assist the regulator, both FCC and state Commission, to assign revenues and costs for purposes of setting interstate and intrastate rates.

Many states still utilize cost-based, return-on-rate-base regulation to establish local exchange tariffs. In Ohio, virtually all companies except Ameritech Ohio, have had their rates established on a return on rate base method (approximately 2.5 million access lines served by 41 local exchange carriers). This would be virtually impossible to perform absent jurisdictional separations. Also, there is still a need for jurisdictional cost information for states that use alternative regulation or price caps to establish intrastate rates. In Ohio, cost-based, return-on-rate-base analysis is one of several reasonableness tests employed when setting rates under a price caps or alternative regulation pricing regime.

FCC-established separations also provide consistency and uniformity in assigning costs to intra and interstate operations. The jurisdictional separations process continues to be a necessary and important regulatory safeguard at least until the local exchange marketplace becomes fully competitive.

In addition, the FCC sought comment on whether the FCC is required by *Smith v. Illinois* or any other authority to prescribe jurisdictional separations. The FCC has tentatively concluded that while the state and federal jurisdictions are responsible for ensuring that rates are not confiscatory, the FCC is not required to prescribe a specific methodology for the allocating of costs. (NPRM at ¶ 32.) The PUCO notes that, although there appears to be no direct mandate by the Court in *Smith v. Illinois* which would require the FCC to prescribe jurisdictional separations, it would appear preferable that the FCC with input from NARUC and the Joint Board, continue to establish these requirements, rather than each state commission establishing requirements or each carrier adopting their own method for the separation of costs.

In the event the FCC would choose to discontinue prescribing a separations methodology of jurisdictional costs, the PUCO would request that the FCC delegate that authority to the states, rather than simply abandoning the entire process. The FCC should also avoid allocating an unusually small share of expenses to the federal jurisdiction or assigning any excessive allocation of expenses to the state jurisdiction. In short, if the FCC is determined to get out of the separations business, it should do so in a manner that does not disrupt or interfere with the regulatory functions of state commissions (*i.e.*, state commissions may have to implement separations if the FCC chooses not to do so).

The PUCO also observed that the FCC intimates throughout its NPRM that the flat rate allocation of 25 percent interstate funding of the local loop should be set at some level below 25 percent because a

25 percent allocation over estimates actual interstate usage. The PUCO recommends that the FCC should maintain the current loop allocation of 25 percent at least until it has had the opportunity to thoroughly review the consequences of its recent decisions in its access reform investigation (CC Docket No. 96-262). In that investigation, the FCC indicates that the long term effect of its decisions to lower interstate access charges will be to increase interstate usage through lower rates to end users. Specifically, while some relatively minor adjustments may need to be made to the FCC's Part 36 separations rules in this investigation, the PUCO maintains that no major revisions should occur until the long term effects of the FCC's access reform investigation have been considered.

Joint and Common Cost Allocations

The FCC asks whether a rule allowing ILECs to separate joint and common costs on an individual case basis should be contingent on an ILEC's showing that competition exits in the local market for which they seek relaxed separations regulation. (NPRM at ¶ 37.)

The PUCO does not believe that such a rule would be in the public interest. The categorization of services as competitive is one of the most contentious issues in regulation today. Indeed, the tension surrounding this issue will only grow exponentially in the near future. It is first necessary for the FCC to establish a clear criteria for measuring competition before such a rule should be written. Otherwise, the PUCO fears that the FCC will be inundated with flexible allocation requests which amount to little more than companies attempting to "find the right competition criteria." Such a process is extremely burdensome and wasteful. Furthermore, the PUCO observes that we are only in the nascent stages of local exchange service competition. As such, the ILEC has an incentive to allocate costs in a non-competitive manner. To address this concern, the PUCO envisions that the *de facto* result will be that the FCC will have to review the proposed allocation and set the allocation procedure anyway.

Separation of Cost Allocation with Interconnection

The FCC proposes two alternatives for allocating the cost of providing interconnection between the state and federal jurisdiction. The first alternative proposed by the FCC is to remove these costs entirely from the separations process and allocate them through a process designed to apply exclusively to these costs. (NPRM at ¶¶ 90 and 91.)

The second FCC proposed alternative is to separate these costs through the current separations process. If the second alternative is chosen, the FCC questions if new categories need to be created or if existing categories can be used. The FCC indicated that it believes that new categories should be created to segregate unbundled network elements (UNE) costs from all other local exchange costs and that these costs should be directly assigned to the state jurisdiction.

The PUCO agrees with the FCC that there is a need to track the revenues and costs associated with interconnection and UNEs. Such information would be valuable in examining the progress of local exchange competition at the state level. The PUCO will not at this time express its opinion on whether all costs associated with UNEs should be assigned to the state jurisdiction. The PUCO, however, reserves the option to set forth a recommendation concerning this issue in its reply comments in this investigation.

Universal Service Contributions

The FCC indicated, in its Universal Service Order CC Docket No. 96-45 (96-45), that a carrier's contributions for the high cost and low income programs will be assessed on the contributor's interstate telecommunications revenues. The FCC in its 96-45 investigation indicated that a carrier's contributions to support schools, libraries, and health care providers will be based on the contributor's interstate and intrastate end user revenues. The FCC also determined that carriers are to recover their contributions through interstate rates. The FCC, in its separations proceeding, tentatively concludes that the incumbent LECs' expense for interstate universal service programs should be directly assigned to the interstate jurisdiction and requests comment on its proposal. The FCC further requests comment on whether incumbent LECs required to contribute to a state universal service fund should assign the expense for such contributions to the intrastate jurisdiction. (NPRM at ¶ 97.)

The PUCO maintains that all ILEC expenses associated with federally-imposed universal service programs should be assigned to the federal jurisdiction and further recovered through interstate charges. Concerning the assignment of expenses associated with intrastate universal service programs, the PUCO maintains that such cost should be assigned to the intrastate jurisdiction and likewise recovered through only intrastate charges to customers.

High Cost Support

The FCC determined in its universal service order that the interstate portion of high cost support will be 25 percent because that percentage currently defines the interstate portion of the non-traffic sensitive loop costs. Consistent with the 96-45 order, the FCC indicates that federal support for ILECs for rural insular areas would be directly assigned to the interstate jurisdiction because it is only intended to support the federal share of costs of providing high cost service, and is intended to only offset the ILEC's interstate revenue requirement. The FCC requests comment on this proposal. (NPRM at ¶ 100.)

The PUCO submits that the FCC's proposal to require all federal high cost support to be assigned to the federal jurisdiction to offset costs assigned to that jurisdiction is reasonable. On a related matter, however, if the FCC in this proceeding changes the separations for non-traffic sensitive cost assignment for the loop to some level below the current 25 percent assignment of costs, the PUCO maintains that the FCC should invite public comment in its 96-45 proceeding to re-examine whether the 25 percent allocation of interstate support should be changed to a different level. For example, it the FCC were to abandon the separations process, the PUCO questions whether it would be logical or appropriate for the FCC continue to provide federal high cost support at the current 25 percent level.

Low-Income Support

The FCC proposes that the initial $3.50 of baseline federal support received by an ILEC should be directly assigned to the interstate jurisdiction since it is intended to offset the subscriber line charge (SLC). The FCC tentatively concludes, however, that any remaining federal subsidy to low income subscribers be directly assigned to the intrastate jurisdiction. (NPRM at ¶ 102.)

The PUCO agrees with the FCC's conclusion that any federal subsidies beyond the credit for the SLC should be assigned to the intrastate jurisdiction. In particular, the PUCO observes that since the SLC is the only federal charge on an ILECs' bill to an end user customer, any subsidy in excess of the SLC will be applied to intrastate charges. Consequently, any federal assistance in excess of the SLC should be assigned to the state jurisdiction.

COMMENTS IN RESPONDING TO CC DOCKET 97-212

In its NPRM in CC Docket No. 97-212 (97-212), the FCC expounds on the second alternative, wherein it lays out two areas of new accounts; Interconnection and Access to UNEs and Transport and Termination. Each of these areas would have two accounts associated with them, one for revenues received from purchasing carriers, and one for expenses associated with purchasing them from other carriers. The amount of costs would be attributed to these categories based on the amount of revenues received for the respective network in the element category.

The FCC asks if it is desirable to provide separate accounts between interconnection and access to unbundled network elements. (NPRM at ¶ 8.)

The PUCO supports the creation of new revenue account 5071, Interconnection and Access to Unbundled Network Elements (UNEs) and new expense account 6551, Interconnection and Access to Unbundled Network Elements. While separate accounts for Interconnection and for Unbundled Network Elements may not currently be deemed necessary, the creation of separate accounts would produce greater detail and a furtherance of segmental comparability among the ILECs, with almost no attendant burden. Moreover, the PUCO believes that two distinct accounts would be useful. By doing so it will be easier to determine what type of competition or market activity is occurring. Given that all types of carriers either are re-negotiating or have re-negotiated their interconnection arrangements, the revenues and expenses associated with interconnection is not an indication of competitive local exchange carrier local market activity.

The FCC also requests comment on establishing a separate account to track the revenue associated with resold service. (NPRM at

¶ 13.) The PUCO agrees with the FCC that a separate Part 32 revenue account should be established for the recording of the sales of telecommunications service for resale. This would enable the FCC and state commissions to identify the revenue associated with resale much easier, at little or no attendant burden upon the selling entity. Moreover, the PUCO submits that the creation of Account 6553, Purchased Telecommunications Service Expense, is necessary for the purchasers of telecommunications services for resale. Without such an account, there could be extreme variations in the recording among the different companies.

The PUCO concurs with the FCC tentative conclusion at Paragraph 17 that many other costs can be captured within existing accounts. However, the PUCO would have an interest in separately recording revenues, expenses and costs associated with collocation or at least have some means of separately identifying them. Due to the potential for almost unlimited combinations, the PUCO believes that separately identifying collocation may help to indicate the actual placement of competitive LEC switching facilities within the local network. This is particularly necessary since the FCC has not extended these accounting requirements to all market participants.

The FCC questions whether its accounting rules should continue to be applied to all Class A companies. (NPRM at ¶ 18. The PUCO believes that these companies should continue to comply with these requirements. Many, if not all, of these carriers have also applied to be or are local exchange carriers. For the same reason that the FCC believes this information is useful to have from the ILECs, this information should be received from Class A companies. This information will give regulators an idea of the various industry players and how they are performing and what assets are being invested and how, e.g., UNE, resale, placement of plant. Indeed, the PUCO itself is beginning to seek market information in a systematic manner from Ohio competitive LECs.

CONCLUSION

In closing, the PUCO Staff wishes to thank the FCC for the opportunity to comment in this docket.

Respectfully submitted,

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